

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

COMMANDER KENNETH J. WHITWELL,

Plaintiff,

v.

REV. EDWARD J. SMITH,

Defendant.

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C.A.No. 05-796-SLR

**RULE 69(a) NOTICE OF RECORDS DEPOSITION DUCES TECUM OF
CATHOLIC DIOCESE OF WILMINGTON, INC. IN AID OF EXECUTION**

TO: Catholic Diocese of Wilmington, Inc.
c/o Anthony G. Flynn, Esquire
Young Conaway Stargatt & Taylor LLP
1000 West Street, 17th Floor
P.O. Box 391
Wilmington, DE 19899-0391

PLEASE TAKE NOTICE that the undersigned counsel for the plaintiff will take the oral deposition of the Fed.R.Civ.P. 30(b)(6) designee of Catholic Diocese of Wilmington, Inc., in aid of execution, at the time and date indicated, continuing from day to day until completed, at the offices of The Neuberger Firm, P.A., Two East Seventh Street, Suite 302, Wilmington, Delaware 19801.

The deposition will be taken by stenographic means.

The deposition is Duces Tecum and the deponent is being subpoenaed, pursuant to Rule 45 in the form attached, to produce the items found in Exhibit A attached. Appearance at the deposition is excused if the documents requested in the subpoena Duces Tecum are produced prior to the time and date indicated.

Name

Date and Time

Catholic Diocese of Wilmington, Inc.

Monday, July 16, 2007 at 9:30 a.m.

THE NEUBERGER FIRM, P.A.

/s/ Stephen J. Neuberger.

THOMAS S. NEUBERGER, ESQ. (#243)

STEPHEN J. NEUBERGER, ESQ. (#4440)

Two East Seventh Street, Suite 302

Wilmington, DE 19801

(302) 655-0582

TSN@NeubergerLaw.com

SJN@NeubergerLaw.com

Dated: June 26, 2007

Attorneys for Plaintiff

Whitwell/Execute Judgment / Notice of Depo - Diocese.final

AO88 (Rev. 1-94) Subpoena in a Civil Case

**Issued by the
UNITED STATES DISTRICT COURT**

DISTRICT OF DELAWARE

Commander Kenneth J. Whitwell
V.

SUBPOENA IN A CIVIL CASE

Rev. Edward J. Smith

Case Number:¹ CIV. NO. 05-796-SLR

TO: Catholic Diocese of Wilmington, Inc.
1925 Delaware Avenue, P.O. Box 2030
Wilmington, DE 19899-2030

- ☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

- ☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME
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- ☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

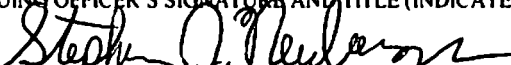
See Exhibit A which is attached

PLACE The Neuberger Firm, 2 E. 7 th St., Suite 302, Wilmington, DE 19801	DATE AND TIME Monday, July 16, 2007, 9:30am
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- ☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
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Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)  Attorney for Plaintiff	DATE June 26, 2007
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ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER
Stephen J. Neuberger, Esq., The Neuberger Firm, 2 E. 7th St., Wilmington, DE 19801, 302.655.0582

(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on next page)

¹ If action is pending in district other than district of issuance, state district under case number.

PROOF OF SERVICE

DATE

PLACE

SERVED

SERVED ON (PRINT NAME)

MANNER OF SERVICE

SERVED BY (PRINT NAME)

TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Parts C & D:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance,

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c) (3) (B) (iii) of this rule, such a person may in order to attend

trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or, if the party in who behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

EXHIBIT A

The term “document” means anything within the scope of Federal Rule of Civil Procedure 34 or Federal Rule of Evidence 1001, which is in your possession, custody or control, including, without limitation, letters, emails, financial records, information stored on a computer or other electronically stored information.

Insurance Policies

1. Any and all insurance policies under which attorney Anthony G. Flynn, Esquire and his law firm were retained to represent the Catholic Diocese of Wilmington, Inc. in the present case.
2. Any and all insurance policies in effect for the years of 1982, 1983, 1984 or 1985 which refer or relate in any way to the functioning of the Catholic Diocese of Wilmington, Inc. or the actions of its teachers, priests, employees, contractors or other agents.